From: Larry.Whited@fuse.net [mailto:Larry.Whited@fuse.net]
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To: ATR-Real Estate Workshop

All Property Listings Must Be Available With The Same CO-OP Commission To All Members of an MLS.

There are two critical issues that must be addressed to open price competition in the real estate brokerage business forever. One is being debated now and the second is a hidden issue that the Department of Justice (DOJ) has not addressed.

First Issue: Sharing of all listings with all member/brokers of an MLS system. There is currently an National Association of Realtors (NAR) Multiple Listing Service (MLS) rule that allows a broker to block the display of a listing or all their listings on other broker web sites. This is used by the large 6-7% brokers to penalize the new web based discount brokers at the expense of the consumer. When a large 6-7% broker blocks their listings from being displayed on new discount broker web sites it is, in effect, a new high tech way to "black ball" the discount broker. This kills the discount brokers ability to attract business and new agents. The discount broker is then forced to yield to the pressure and raise their commission to the norm in their MLS area or go out of business. If this rule is allowed to stand the consumer will continue to pay high real estate commissions. The DOJ has just filed suit against NAR to eliminate this rule.

Second Issue: The hidden issue that must be addressed to completely open price competition forever in the real estate field is known as the Adverse Split Clause in the National Association of Realtors (NAR) MLS regulations. This is a hidden issue that the DOJ must address or their effort to open price competition in real estate will be a failure. This clause has been used over the years by the large 6-7% brokers to keep alternative, low-commission, start-up brokers in line by threatening to use this clause against them.

This clause allows a broker to list a property in MLS offering, for example, a 3% co-operating or shared listing commission ("co-op") to any broker who sells the property. Then the broker may, without the consent of their agents or clients (often even without notification), send a notice to a discount broker stating they will only pay them 1%, or worse, not at all. The result of this letter is that the new discount broker will not be able to attract and hire other agents as the agents know the new broker is being blackballed and will be forced out of business unless they change their pricing structure. Without the ability to recruit new agents, the new broker is forced to raise their commission to the normal 6 or 7%, or go out of business. This is the most powerful restraint of trade and price fixing tool that the large brokers have to force discount brokers to increase their commission and protect the "good old boy" way of doing business, as usual, at the expense of the consumer. There is no reason that a seller would agree to reduce the co-op to other brokers as to do so would limit the marketing of their home.

This clause is not being used right now by the larger brokers because of the DOJ investigation and pending legal action. You can bet that the large brokers hope the DOJ does not touch this clause and cannot wait to use it once the investigation has ended. If the DOJ ends its investigation without forcing this clause to be eliminated by NAR, they will guarantee that the consumer will continue to pay high real estate commissions for a long time.

Larry A. Whited, Sr., President & founder

www.WebMLS.net Realtors

An Ohio full service, discount, virtual real estate brokerage operating throughout the state of Ohio.

Best Regards,
Larry A. Whited, Real Estate Broker, CRB, CRS, GRI

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www.LarryWhited.com An eWhited.com Company

24/7 - (513)-779.3004, Fax (513)-618-5881